

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA

v.

EDWARD HUGH OKUN

Criminal No.
3:08CR00132-01
March 10, 2009

EXCERPT TRANSCRIPT OF **CONTINUED**
TESTIMONY OF DAVID FIELD
BEFORE THE HONORABLE ROBERT E. PAYNE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

MICHAEL DRY, Assistant United States Attorney
BRIGHAM CANNON, Assistant United States Attorney
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Counsel on behalf of the United States

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BY: BARRY J. POLLACK, ESQ.

Counsel on behalf of the Defendant.

DIANE J. DAFFRON, RPR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

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DIRECT CROSS REDIRECT RECROSS

5 DAVID FIELD

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1 THE CLERK: Criminal No. 3:08CR00132-01, the
2 United States of America vs. Edward Hugh Okun.

3 Mr. Michael Dry and Mr. Brigham Cannon and Ms. Jessica
4 Brumberg represent the United States. Mr. Robert J.
5 Wagner, Ms. Carolyn V. Grady, and Mr. Barry Pollack
6 represent the defendant.

7 Are counsel ready to proceed?

8 MR. DRY: The United States is ready to
9 proceed.

10 MR. WAGNER: The defendant is ready, Your
11 Honor.

12

13 * * * * *

14

15 THE COURT: Mr. Field is back on the stand,
16 right? Can we get Mr. Field?

17 Just have a seat, Mr. Field. I remind you,
18 you are under the same oath that you took yesterday.

19 Mr. Pollack.

20 MR. POLLACK: Thank you, Your Honor.

21

22 CROSS-EXAMINATION (Continuing)

23 BY MR. POLLACK:

24 Q Good morning, Mr. Field.

25 A Good morning.

1 Q I'd like to start with something we briefly
2 discussed yesterday. Isn't it a fact, Mr. Field, that
3 you were never directed by Mr. Okun not to disclose
4 information about the QI loans, the qualified
5 intermediary loans?

6 A I was directed not to disclose information.

7 Q So that would be the opposite of what I'm saying,
8 right?

9 A Yes.

10 Q Now, you remember meeting with the government
11 agents, I know you may not recall the precise date,
12 June 19, 2007. Do you recall meeting with them in that
13 time frame?

14 A Yes.

15 Q At that time, like all your other meetings with
16 the government agents, you knew it was important to be
17 truthful and to be accurate, correct?

18 A Yes.

19 Q Isn't it true that at that time you told the
20 government agents that you were never directed by
21 Mr. Okun not to disclose information about the QI
22 loans?

23 A I don't remember saying that.

24 Q I'm going to hand up to you a copy of the
25 interview memorandum dated June 19. The memorandum is

1 dated June 24, but the interview took place on June 19,
2 2007, and ask you to look at the first sentence in the
3 third full paragraph.

4 Don't read it out loud, but just review it
5 yourself and whenever you're done, take as much time as
6 you need, hand it back to the courtroom security
7 officer, who'll hand it back to me.

8 A (Complying.)

9 Q Mr. Field, having had the opportunity to review
10 that document, is it still your testimony that you did
11 not tell the agents that you were never directed by
12 Mr. Okun not to disclose the evidence about the QI
13 loans?

14 A I do not remember the conversation that that
15 recorded, and I do not remember what the agent thought
16 at the time, but, clearly, in my mind, I was directed
17 not to discuss the QI loans with anyone else.

18 Q Mr. Field, my question is: Did you make that
19 statement to the agents on that occasion?

20 A I don't remember.

21 THE COURT: He answered that he didn't
22 remember that. He didn't remember what the question
23 was or what they were talking about or what they knew.
24 He answered it.

25 MR. POLLACK: I understand. I want to be

1 clear I wasn't asking what they knew or what they were
2 thinking. I was asking what you said.

3 THE COURT: He answered.

4 MR. POLLACK: Thank you, Your Honor.

5 BY MR. POLLACK:

6 Q Okay. Let's move on to something different then.

7 MR. POLLACK: Ms. Bishop, can you put up
8 Government 139, which is already in evidence.

9 Q This is the memo that you wrote on November 13,
10 2006, about the issues related to Mr. Pajonas and his
11 performance, correct?

12 A Yes.

13 Q And we talked yesterday about the section that's
14 highlighted, "Legal Situation"?

15 A Yes.

16 Q And that was about Mr. Pajonas's failure to
17 identify that there was an issue with the exchange
18 agreements and his failure to correct that, correct?

19 A Yes.

20 Q Now, I want to be clear. For you, Mr. Field,
21 prior to the time Mr. Perkins raised the issue of the
22 exchange agreements, that had not been an issue for
23 you? It hadn't been something you were focused on; is
24 that correct?

25 A Prior to -- about a week before that in my meeting

1 with Mr. Pajonas who raised all of these issues, but
2 prior to that time I had not been focused on that
3 issue.

4 Q Okay. In fact, you, yourself, had not even
5 reviewed the exchange agreements; is that correct?

6 A That's true.

7 Q Even though you were a senior executive with the
8 company?

9 A Right. My responsibilities do not include QI
10 companies.

11 Q That was Mr. Pajonas's responsibility?

12 A Correct.

13 Q Now, after -- I'm sorry. Going back to this
14 document, the preceding paragraph, the issue
15 surrounding the exchange agreements wasn't the only
16 concern you expressed about Mr. Pajonas's performance;
17 isn't that right?

18 A Correct.

19 Q And let's look at the preceding section,
20 "Accounting Records." Can you just go ahead and read
21 that paragraph to us?

22 A Yes, sir. "Accounting Records - The accounting
23 records of the 1031 Tax Group and operating units are
24 in complete disarray with no viable information
25 available to either management or ownership as to the

1 operating profit or loss or financial stability. The
2 customer records relating to the details of exchanges
3 is incomplete, inaccurate, and in disarray causing loss
4 of income from fees and an inability to manage the
5 float and cash resources. While Todd might assert that
6 this was outside his control due to the actions of
7 IPofA and the borrowing of cash, the maintenance of
8 customer records, including the exchange itself and
9 fees earned, were always within his control and
10 responsibility. This is a serious failure to perform
11 his duties as president."

12 Q Thank you.

13 MR. POLLACK: Ms. Bishop, you can go ahead
14 and take down Government 139.

15 Q On November 9, you had a telephone conversation,
16 you participated in a telephone conversation with some
17 members of the law firm of McGuire Woods?

18 A Excuse me. On what date?

19 Q November 9, 2006.

20 A Yes, I did.

21 Q And after that you spoke with Mr. Okun?

22 A I believe it was the next day, yes.

23 Q And Mr. Okun agreed that the company should move
24 quickly to have all the exchange agreements redrafted,
25 correct?

1 A Yes.

2 MR. CANNON: Objection, Your Honor. Hearsay.

3 MR. POLLACK: It's not for the truth. It's
4 the direction that he's giving to his underlings and
5 it's inconsistent with the notion that he's in a
6 conspiracy to make misrepresentations to the clients if
7 he's directing the changes be made to clarify the
8 clients.

9 MR. CANNON: It's not relevant if it's not
10 for the truth.

11 MR. POLLACK: It's relevant because the
12 instruction was given.

13 THE COURT: Overruled.

14 BY MR. POLLACK:

15 Q Mr. Okun agreed that the companies should move
16 quickly to have all the exchange agreements redrafted,
17 correct?

18 A Yes.

19 Q And all the advertising and websites changed,
20 correct?

21 A Yes.

22 Q And he also wanted an employee manual prepared so
23 that employees would know exactly what they could say
24 and what they could not say, correct?

25 A Yes.

1 MR. POLLACK: And if we can put up
2 Government's Exhibit 140.

3 THE CLERK: Has it been published to the
4 jury?

5 MR. POLLACK: It has.

6 BY MR. POLLACK:

7 Q This is an e-mail from you, but attached to the
8 e-mail is another memo that you did, correct?

9 A Correct.

10 Q And this is a memo to Mr. Okun, Ms. Coleman, and
11 Mr. Perkins, yes?

12 A Yes.

13 Q Same date as the memo we just looked at,
14 November 13, 2006, right?

15 A Yes.

16 Q And you recommend a number of actions and those
17 are the three bullet points, correct?

18 A Yes.

19 Q A complete review and redraft of the legal
20 documents that were used in the exchange process,
21 correct?

22 A Yes.

23 Q Those would be what I have been calling the
24 exchange agreements?

25 A Yes.

1 Q A complete review and rewriting of the information
2 contained in the website, correct?

3 A Yes.

4 Q And the drafting of a sales manual to tell the
5 sales force exactly what they can do?

6 A Yes.

7 Q Mr. Okun readily agreed to those recommendations,
8 did he not?

9 A He did.

10 Q If I can draw your attention to the next
11 paragraph, starting with "During a discussion with Ed
12 Okun," can you please read from there the rest of the
13 paragraph?

14 A Yes. "During a discussion with Ed Okun on Friday,
15 November 10, a decision was reached to outsource the
16 review and redraft of all documents for purposes of
17 completing the task at the earliest possible time.
18 Initial thoughts were to expand McGuire Woods' mission
19 to include this. Eric and David will present a plan to
20 do this as soon as possible."

21 Q Mr. Okun's instructions were to get this done at
22 the earliest possible time?

23 A Yes, sir.

24 Q And suggested using McGuire Woods for that
25 purpose?

1 A Yes.

2 Q However, McGuire Woods did not end up completing
3 the work that the company had wanted McGuire Woods to
4 do for it; is that correct?

5 A I believe that to be true.

6 Q In fact, after Mr. Perkins resigned, McGuire Woods
7 indicated they also were going to resign from the
8 representation, correct?

9 A I was told that by Ms. Coleman.

10 Q In particular, McGuire Woods stated that they had
11 a conflict of interest that precluded them from
12 continuing to represent both IPofA and the 1031 Tax
13 Group?

14 A They did.

15 Q And so as a result of McGuire Woods withdrawing or
16 resigning, a decision was made that another firm would
17 be retained, another law firm would be retained, to
18 complete the same tasks that were going to be assigned
19 to McGuire Woods; is that correct?

20 A Yes.

21 Q And that included changing the exchange agreements
22 and the websites?

23 A Yes.

24 Q To make sure that they didn't say anything that
25 was inconsistent with the practices of the company?

1 A Yes.

2 Q And a Florida firm was retained for that purpose,
3 correct?

4 A Yes.

5 Q And that's the firm that is KPKB, correct?

6 A Yes.

7 Q And you spoke with the Florida lawyers, is that
8 correct, around the end of November 2006?

9 A No, I don't believe so.

10 Q Did you learn at the end of November of 2006 that
11 the news from those lawyers was very good?

12 A More mid December, but yeah, Mr. Okun called me in
13 mid December.

14 Q And you were aware that the Florida lawyers did
15 not believe there was anything illegal about the loans?

16 A That's what Mr. Okun communicated to me.

17 Q You yourself didn't speak directly to the Miami
18 lawyers?

19 A I did not.

20 Q Now, the government showed you Exhibit 217, which
21 is in evidence. We can put that up. You can just go
22 down to the bottom. This is a request for a borrowing
23 from the 1031 Tax Group, right?

24 A Yes, sir.

25 Q And in this case, it's a borrowing by Okun

1 Holdings. By this point Okun Holdings existed?

2 A Yes.

3 Q And you are the one who is initiating this
4 request, correct?

5 A I am.

6 Q And you want the loan to be documented, correct?

7 A Absolutely, yes.

8 Q And the interest rate to be documented?

9 A Yes.

10 Q And if we can go up to the top e-mail, Mr. Okun
11 readily agrees?

12 A He did.

13 Q Now, in addition to making sure that loans were
14 documented, you also wanted to have it be some
15 accounting effort to make sure that everybody was
16 comfortable that they had quantified the loans that had
17 been taken to date; is that fair?

18 A Yes.

19 Q And Mr. Zacarias did some analysis in that regard?

20 A He did.

21 Q However, you believe that Mr. Zacarias's figures
22 were really bogus accounting; is that correct?

23 A No.

24 Q They were bogus accounting because they didn't
25 take into account the fact that the QIs had some

1 operating losses, not all of the money that was spent
2 by the QIs were borrowings; is that correct?

3 A Could you say that a different way, please, so I
4 can be sure I understand?

5 Q You believe that the figure that Mr. Zacarias came
6 up with as what was supposedly an amount that had been
7 borrowed by IPofA or other Okun entities was bogus
8 accounting because it didn't take into account the QI,
9 qualified intermediary, losses, their operating losses?

10 A I'm not sure what exact figure you're referring
11 to. Mr. Zacarias worked and produced a number that he
12 said represented the borrowings at December 31, '05, I
13 guess, and that number was to represent the borrowings
14 from customer funds.

15 I don't understand exactly what you mean by
16 separate losses of the entities themselves. Those two
17 numbers would seem to be different numbers.

18 Q Okay. Should be different numbers?

19 A Should be different numbers.

20 Q Okay. The analysis that Mr. Zacarias performed
21 and his calculation of what the borrowings supposedly
22 were for the year ended December 31, 2005?

23 A Yes.

24 Q So, in other words, what had been borrowed during
25 the calendar year of 2005?

1 A Yes.

2 Q That analysis, you believe, was bogus accounting;
3 is that correct?

4 A No.

5 Q Do you recall meeting with the federal agents in
6 this case on August 29, 2007, or thereabouts?

7 A Yes.

8 Q Do you recall saying that Zacarias had come up
9 with a loan amount and the liability for the clients,
10 and that this was really bogus accounting because it
11 did not take into account the losses of the QIs?

12 A Again, I think that we may have been talking about
13 that subject in the discussion with the government, but
14 those two numbers are separate numbers, and she may
15 have written it down incorrectly or whatever, but the
16 loans, which are part of the balance sheet of the 1031
17 Group, and the operating results, which are part of the
18 income statement, would not have been generally lumped
19 into a similar item.

20 Q They should not have been?

21 A They should not have been.

22 Q Are you telling me that if the agent wrote in her
23 report that you used the phrase "bogus accounting" to
24 refer to Mr. Zacarias's analysis, that the agent just
25 got that wrong and you never used that phrase?

1 A I don't remember that. That seems odd to me that
2 that would have happened.

3 Q Would looking at the report help refresh your
4 recollection?

5 A Yes.

6 MR. POLLACK: I'm going to show Mr. Field a
7 memorandum of interview from August 29, 2007, and
8 direct him to the first paragraph of page 8.

9 Q You don't need to read from the report. My only
10 question is: Having had the opportunity to review
11 that, do you now recall one way or the other whether
12 you used the phrase "bogus accounting" in your
13 interview with the government to describe Mr.
14 Zacarias's analysis?

15 A If earlier in this paragraph they talk about the
16 general accounting of the 1031 groups, and my response
17 using that phrase was that they were only looking at
18 the accounting as it related to the liability for
19 customer accounts. They were mixing their message
20 here. They were earlier in the sentence before, two
21 sentences before, talking about the accounting of the
22 1031 group of which the liabilities for customer funds
23 would have been only one component.

24 So to have looked at only the liability as related
25 to the entire accounting for the 1031 group would have

1 been inaccurate, and I apparently used the word "bogus
2 accounting" if that's all that they were looking at.

3 THE COURT: Let me see that document.

4 MR. POLLACK: Yes.

5 THE COURT: All right. You can give it back
6 to Mr. Pollack.

7 Q Mr. Field, I was confused. You used the word
8 "they" several times in that last sentence. In using
9 the term "bogus accounting," were you referring to Mr.
10 Zacarias's accounting or were you referring to the
11 government agent's accounting?

12 A No, I was saying that the use of Mr. Zacarias's
13 number to represent the whole accounting for the 1031
14 Tax Group was bogus, was not true.

15 Q Who was doing that?

16 A I forget who we were talking about earlier in that
17 paragraph.

18 Q Were you talking about Mr. Zacarias and his team?

19 A I thought in the sentence -- could I see that
20 again?

21 Q Yes. Don't testify from the report. My question
22 is a simple one. Having had the chance to review that,
23 whose accounting, who were you referring to when you
24 used the phrase "bogus accounting"?

25 THE COURT: That wasn't the question you

1 asked him. You asked him who he was referring to when
2 he said the word "they," and he wanted the document to
3 refresh his recollection about what it was that he
4 meant by "they." That is what you had on the table at
5 the time you asked the question. That's why it went
6 over there. If you want to ask another question, okay,
7 but that's not the one you asked.

8 Q Maybe I'm confused because I thought it was one
9 and the same. I thought "they" was the reference to
10 whomever it was that had engaged in the bogus
11 accounting. Am I correct about that?

12 A The "bogus accounting" refers to the use of Mr.
13 Zacarias's information in a way that wasn't complete
14 and this was Mr. Perkins.

15 Q I see.

16 THE COURT: Perkins is referred to in the
17 first part of the memo, and he's talking about what
18 Perkins said and the way Perkins was using it.

19 Now, look. Let me tell you both something.
20 Impeachment impeaches, and you get on the stick, and if
21 it actually relates to something that impeaches, that's
22 fine. But to go off the reservation isn't proper. And
23 you get up and do your job, and you do your job, and
24 then we'll get it straight, and we won't have to spend
25 15 minutes wasting time talking about matters that may

1 or may not be impeaching. Let's do it right.

2 MR. POLLACK: I apologize, Your Honor.

3 THE COURT: All right. Let's go.

4 MR. POLLACK: I was just trying to understand
5 the answer to make sure that I understood correctly.

6 BY MR. POLLACK:

7 Q So it was Mr. Perkins's use of Mr. Zacarias's
8 analysis that you were referring to as bogus?

9 A Yes.

10 Q Okay. Now, you talked yesterday with the
11 government about a situation where there were funds
12 that Mr. Okun wanted to move, but they were in a
13 segregated account. Do you recall that, a specific
14 instance?

15 A Yes.

16 Q And the funds were not moved. They were returned
17 to the customer?

18 A I believe that's right.

19 Q Okay. I want to ask you about the opposite
20 situation. You also learned, did you not, that there
21 were times that pooled accounts were used to pay back
22 an exchanger whose money was in a segregated account?

23 A I was aware that that happened.

24 Q Okay. And just so we're clear, some of the
25 exchangers' monies were kept in segregated accounts,

1 meaning there's a specific account with the customer's
2 name on it, correct?

3 A Yes.

4 Q For other exchangers, the monies were pooled,
5 meaning they were commingled, all of the exchange money
6 was put into an account that had different exchangers'
7 balances in them; is that correct?

8 A Yes.

9 MR. CANNON: Objection. I just would like to
10 clarify a time frame for these questions and for
11 Mr. Field's benefit and I think the jury's.

12 THE COURT: All right. Time frame, Mr.
13 Pollack?

14 BY MR. POLLACK:

15 Q When, Mr. Field, did you become familiar enough
16 with the QI part of the business to learn about the
17 distinction between pooled accounts and segregated
18 accounts?

19 A In the fall of 2006.

20 Q When did you first start yourself reviewing some
21 exchange agreements?

22 A I never reviewed -- when -- the first time I saw
23 any of the exchange agreements was when Mr. McElroy
24 from McGuire Woods requested those be assembled and
25 sent to him for his review. I did look at one of them

1 at that time.

2 Q Okay. Did you become aware that some of the
3 exchange agreements called for the use of segregated
4 accounts, but others called for the use of pooled
5 accounts?

6 A I didn't look at enough of a sample to determine
7 that myself.

8 Q Did you ever at any point ever determine that?

9 A No.

10 Q But you did become aware at some point that money
11 from the pooled account or a pooled account had been
12 used to pay back exchangers or complete an exchange for
13 an exchanger who had a segregated account?

14 A Mr. Zacarias told me that.

15 Q As a result, on the books it showed that a
16 particular exchanger was still owed money because his
17 money was still in the exchange account, but the
18 reality is that exchanger had already been paid because
19 he had been paid from a pooled account?

20 A I was told that that did happen, yes.

21 Q So as a result, the numbers as to how much money
22 the exchangers were owed were overstated?

23 MR. CANNON: Objection, Your Honor. He's
24 testifying about what other people have told him. I'm
25 not sure there's a foundation for what his personal

1 knowledge is.

2 THE COURT: I think that's correct, but you
3 let him testify to at least four answers that fit
4 exactly that description and now you object.

5 Sustained.

6 BY MR. POLLACK:

7 Q Well, Mr. Field, part of your responsibilities
8 became overseeing the efforts to account for the
9 qualified intermediary loans, correct?

10 A At some time frame in 2007 I had a more direct
11 involvement with the 1031 accounting, but at a very
12 high level. The accounting was never done in Richmond
13 for individual customer accounts.

14 Q But you relied on that high level understanding of
15 the accounting and what was being reported back to you
16 by Mr. Zacarias and others in doing your job; is that
17 correct?

18 MR. CANNON: Objection, Your Honor. Mr.
19 Zacarias wasn't with the company in 2007. I mean, it's
20 just not clear.

21 THE COURT: Sustained.

22 BY MR. POLLACK:

23 Q What were your sources for gaining a high-level
24 understanding of what the accounting or the borrowings
25 from the qualified intermediaries consisted of?

1 A At what point?

2 Q In 2007.

3 A In 2007, the QI group had a controller who
4 actually was based in Richmond. The customer
5 accounting was based in Denver, I believe, in 2007.
6 And so they would provide information to the
7 controller, and I would get information from her.

8 Q And you relied on that information to do your job
9 because you needed a high-level understanding of that
10 issue?

11 A Yes.

12 Q And you relied on that information, the
13 conversations that you had with Mr. Okun, on this
14 subject matter?

15 A I did.

16 Q In doing that, did you communicate to Mr. Okun
17 that the numbers from the borrowings were overstated
18 because they showed as still outstanding some balances
19 for exchangers who had segregated accounts who, in
20 fact, had already been paid using pooled accounts?

21 A There was a question whether that was a fact or
22 not as result of the work that was done by a special
23 group that was hired to go in and rebuild the
24 accounting records for 2006. I'm sorry, I don't
25 remember the name of that group, but a group was hired

1 that literally went into each of the offices to try and
2 rebuild those records, and they were still working on
3 those records well into the spring of 2007.

4 Q Did you communicate to Mr. Okun well into the
5 spring of 2007 that there was an issue as to whether or
6 not the quantification of the borrowings was overstated
7 as a result of pooled funds being used to pay
8 exchangers that had segregated accounts?

9 A As I recall, this accounting firm or outside firm
10 that I mentioned had quantified a number of accounts
11 which had not been verified. I don't remember the
12 amount that they held in question.

13 Q My question was what have you communicated to
14 Mr. Okun, if you recall?

15 A I recall telling him that when reporting on the
16 work of this outside accounting agency, that a certain
17 amount had been reviewed and was final, and a certain
18 amount was questionable, and there were several
19 accounts that they had questions on, whether somebody
20 had been paid twice, for example, or whether, you know,
21 they had been paid the first time.

22 Q Now, in April of 2007, you discussed efforts to
23 obtain some additional financing, correct?

24 A With?

25 Q With the government yesterday.

1 A Excuse me?

2 Q Yesterday you testified about efforts in April to
3 obtain additional financing. You talked about the
4 expectation of a \$40 million loan?

5 A Yes.

6 Q And you expected that that was simply going to be
7 the first tranche of what ultimately was going to be
8 \$250 million worth of financing, correct?

9 A Yes.

10 Q And the purpose of obtaining that financing was to
11 help both IPofA and the 1031 Tax Group with their
12 short-term liquidity issues?

13 A Correct.

14 Q If we can look at Government's Exhibit 265, I
15 think it's 265, and I think it has been admitted, but
16 maybe I'm wrong.

17 THE CLERK: It has.

18 MR. POLLACK: 265 has been admitted.

19 MS. GRADY: 265 is missing in action from our
20 book.

21 MR. POLLACK: Here, I have one.

22 THE COURT: Do you need one, Mr. Pollack?
23 I've got a copy.

24 MR. POLLACK: I think I'm okay. Thank you,
25 Your Honor. I appreciate it. It's in evidence, so we

1 can go ahead and you put it up on the screen.

2 THE COURT: Yes, it is.

3 BY MR. POLLACK:

4 Q This is an e-mail that you sent to Mr. Okun on
5 April 25, 2007, correct?

6 A Yes, it is.

7 Q And that is just two days before the government
8 executed a search warrant at IPofA's offices, correct?

9 A Yes.

10 Q And at this time you were anticipating immanently
11 a \$40 million loan, correct?

12 A I was, yes, sir.

13 Q And the borrower for that was going to be Okun
14 Holdings, correct? You can go ahead and turn to the
15 second page and see if that -- the very top. Am I
16 correct?

17 A Okun Holdings was the generic term that is listed
18 there, but in this sense it was used as the sort of
19 umbrella organization. Okun Holdings itself did not
20 own any of the property on which these loans were being
21 based. So it couldn't have been Okun Holdings as the
22 only borrower.

23 Q But it would be some Okun-owned entity or
24 combination of Okun-owned entities?

25 A Yes.

1 Q Not the 1031 Tax Group, though? It didn't own any
2 real estate, right?

3 A Yes, correct.

4 Q And the purpose of the loans was to be the first
5 step in addressing the short-term cash flow or
6 liquidity problems?

7 A Yes.

8 Q Out of that first \$40 million, 16 1/2 million was
9 going to be used immediately as an infusion of cash to
10 the qualified intermediary companies, correct?

11 A Yes, that was the plan.

12 Q Following the execution of the search warrant two
13 days later, the lender chose not to make this loan; is
14 that correct?

15 MR. CANNON: Objection, Your Honor.
16 Relevance.

17 THE COURT: I can't think of any relevant
18 reason, can you?

19 MR. POLLACK: I can, Your Honor.

20 THE COURT: We're in the same position we
21 were in yesterday where if I couldn't think of it, you
22 couldn't.

23 MR. POLLACK: Well, you know, that was at 5
24 o'clock in the afternoon. Now that I've had a good
25 night's sleep --

1 THE COURT: Good. What's the relevancy?

2 MR. POLLACK: Well, the relevance is that the
3 government put into evidence that there was a
4 short-term liquidity crisis, and the government
5 believed that to be relevant, and I am trying to rebut
6 the notion that that was a significant crisis or that
7 there was no plan in place to deal with that.

8 THE COURT: So that's what the relevance is?

9 MR. POLLACK: It's to directly rebut evidence
10 the government opened the door to by putting on in its
11 direct examination.

12 THE COURT: I don't know why the government
13 put the exhibit in in the first place. Why isn't he
14 right?

15 MR. CANNON: Well, Your Honor, this
16 particular exhibit is introduced as part of an
17 overall -- I mean, I don't want to get into too much
18 detailed evidence in front of the jury, but, in part,
19 it's to talk about Mr. Okun is telling people to keep
20 going on. And yesterday when we talked about a
21 temporary cash liquidity crisis, that was not in the
22 context Mr. Pollack talks about, but that was actually
23 in the context of Mr. Field's testimony about his
24 conversations with Mr. Okun, and what they would tell
25 people, not that it was a fact.

1 THE COURT: All right. Objection sustained.

2 BY MR. POLLACK:

3 Q Well, let's talk specifically then about that
4 context that Mr. Cannon raises. You talked yesterday
5 about telling an exchanger that there had been an
6 unanticipated slowdown in the real estate market. Do
7 you recall that?

8 A I do.

9 Q And you told the exchanger that their money was
10 tied up in longer-term, meaning less liquid,
11 investments, correct?

12 A Yes.

13 Q But nonetheless, you told the exchanger that it
14 was just a temporary cash flow issue, correct?

15 A Yes.

16 Q And you anticipated that it was going to be
17 resolved immanently, correct?

18 A Yes.

19 Q And you offered to give an additional amount of
20 interest to the exchanger to make up for the fact that
21 they were going to get their money a little bit late,
22 correct?

23 A Yes.

24 Q And the exchanger agreed to accept that additional
25 amount of money in return for getting money late?

1 A They did.

2 Q And you believed that, in fact, this was a
3 short-term problem that was going to be resolved
4 immanently? In fact, you believed that immanently the
5 QIs were going to have \$16.5 million of cash?

6 MR. CANNON: Objection, relevance. What
7 Mr. Field believed is not relevant to any question the
8 jury has to decide in this case.

9 THE COURT: Why is his belief relevant is the
10 question?

11 MR. POLLACK: Well, Mr. Cannon asked
12 specifically about this conversation on
13 cross-examination. I'm certainly entitled to ask the
14 witness why he communicated the information that he
15 did.

16 MR. CANNON: I believe that those questions
17 were asked and answered on direct, but, I mean, but in
18 terms of his motivation or why he did what he did is
19 still not relevant to any discussion or any decision
20 that the jury ultimately has to make with regards to
21 Mr. Okun's culpability.

22 MR. POLLACK: Your Honor, it was discussed on
23 direct. It explains why somebody did what they did.
24 We've heard that 20 times. It can't be that's the rule
25 on direct and it's not the rule on cross.

1 THE COURT: Well, actually there are plenty
2 of times when what's sauce for goose is not sauce for
3 gander, but in this instance the objection is
4 overruled.

5 Look, when you put stuff in, you have got to
6 make decisions ahead of time about what the
7 consequences are, and you have got to live with the
8 consequences. Now, you chose to put this in. He's
9 entitled to ask a question about this particular issue.
10 It wasn't true of the preceding one, but it is true of
11 this one.

12 BY MR. POLLACK:

13 Q When you made the statement to the exchanger, you
14 believed that you were immanently going to get an
15 infusion of \$16.5 million for the qualified
16 intermediary companies, didn't you?

17 A Yes, I did.

18 Q You truthfully told the exchanger the money was
19 tied up in a longer-term investment. You didn't
20 conceal that from the exchanger?

21 A Yes.

22 Q Now, after the search warrant was executed on
23 April 25, 2007, Mr. Rosen paid a visit to IPofA's
24 offices; is that correct?

25 A Yes.

1 Q And Mr. Rosen was one of the Miami attorneys that
2 was hired after McGuire Woods withdrew?

3 A I believe that's true, yes.

4 Q And Mr. Rosen in his visit to the office told all
5 of the --

6 MR. CANNON: Objection, Your Honor.

7 THE COURT: He hadn't asked the question yet.

8 MR. CANNON: He is going to repeat what
9 Mr. Rosen said, but that's clearly hearsay.

10 THE COURT: All right. It may be, but until
11 I know what the question is, I can't rule on it. So
12 you make your objection after the question gets out.
13 The jury is paying attention. If I overrule an
14 objection, they are not going to pay attention to the
15 question like I told them.

16 Now, do you want to ask the question again?

17 It's going to get an objection, so don't
18 answer it until I get a chance to rule on it.

19 MR. POLLACK: I don't know. Maybe Mr. Cannon
20 will change his mind when he hears the whole question.

21 THE COURT: Maybe it can be retooled in such
22 a fashion as to make him want to sit down. All right.
23 Let's go.

24 BY MR. POLLACK:

25 Q Mr. Field, when Mr. Rosen visited the office, he

1 told the assembled employees that the company had done
2 nothing illegal; is that correct?

3 MR. CANNON: Objection, Your Honor.

4 THE COURT: Sustained.

5 MR. POLLACK: I am not putting it in for
6 whether or not Mr. Rosen's statement was true or not
7 true, simply for the fact that it was said and the
8 effect that it had on the listeners.

9 THE COURT: The fact it was said has no
10 relevance at all with the possible exception of
11 confusing the issues and protracting the trial, and
12 it's not relevant, and even if it is relevant, it's
13 excludable under 403. What Mr. Rosen thought doesn't
14 make any difference anyway.

15 Let's go.

16 MR. POLLACK: Okay.

17 BY MR. POLLACK:

18 Q Now, Mr. Field, you discussed on direct
19 examination with the government the fact that you chose
20 to enter into a plea agreement in this case, correct?

21 A Yes, sir.

22 Q And that was based on your personal conduct
23 correct?

24 A Yes.

25 Q And in making that agreement with the government,

1 you agreed with the government as to how the United
2 States Sentencing Guidelines would apply in your case,
3 correct?

4 A Yes, sir.

5 Q And you understand and understood when you entered
6 into the agreement, did you not, that there are United
7 States Sentencing Guidelines that advise a court as to
8 what range it ought to sentence an individual to for
9 various offenses, correct?

10 A Yes.

11 Q And the sentencing guidelines range that you
12 agreed to applied in your case with the government was
13 135 to 168 months or about 11 and a quarter years to 14
14 years; is that correct?

15 A You'd have to explain further where that number is
16 coming from. I don't quite understand.

17 Q Okay.

18 A Is this the point system you're talking about?

19 MR. POLLACK: Let me show to the witness
20 solely for purposes of refreshing his recollection a
21 copy of his plea agreement, which I'll mark for
22 identification only as Defendant's Exhibit 20.

23 BY MR. POLLACK:

24 Q I'd ask that you to take a look at page 2 of the
25 document, Mr. Field.

1 A Okay.

2 Q As you understand the United States Sentencing
3 Guidelines, they would work on what's called "a point
4 system"?

5 A Yes.

6 Q And you were agreeing with the government that
7 under that system, your recommended sentencing range
8 would be 135 to 168 months, which is 11 and a quarter
9 to 14 years?

10 MR. CANNON: Your Honor, I don't believe that
11 that's actually from the plea agreement. I think that
12 Mr. Field testified he didn't know what the number is.

13 THE COURT: Either the plea agreement has it
14 in there or it doesn't, does it not?

15 MR. POLLACK: It's on page 2.

16 THE COURT: Is this an 11(C)(1)(c) agreement?

17 MR. POLLACK: No, it's not.

18 MR. CANNON: No, Your Honor.

19 THE COURT: All right.

20 Why are you confused about what's in the plea
21 agreement? Don't you have it in front of you,
22 Mr. Cannon?

23 MR. CANNON: Your Honor, I apologize, but I
24 misplaced it. I had it yesterday, but I don't have it
25 in front of me.

1 MR. DRY: Do you a copy for us?

2 MR. POLLACK: I do not have a copy other than
3 the one the witness has.

4 But are you through with it, Mr. Field?

5 THE WITNESS: I am.

6 THE COURT: Could I see it on its way back
7 there?

8 Well, Mr. Pollack, it's not actually in the
9 plea agreement. That's how you calculate the
10 application of those things, right? I mean, I don't
11 see those numbers in the plea agreement except
12 somebody's handwritten notes.

13 MR. POLLACK: I see what you're saying. The
14 offense level is in the plea agreement, but what that
15 offense level means in terms of sentencing is not.

16 THE COURT: There's no sentencing range in
17 here, which is why he's confused.

18 MR. POLLACK: I understand.

19 THE COURT: And the objection is sustained
20 because of that.

21 You can ask him what he thinks -- the United
22 States agreed to make a recommendation. It's not
23 binding on the Court. What does he recall that
24 recommendation would yield in the way of a sentence?

25 Can you answer that question?

1 THE WITNESS: Five years.

2 THE COURT: What?

3 MR. POLLACK: Five years is the agreement
4 that I entered into. But what it might have been I
5 don't remember being discussed.

6 THE COURT: Five years is 60 months, is it
7 not?

8 MR. POLLACK: It is, but we'll get to that.

9 THE COURT: Okay.

10 BY MR. POLLACK:

11 Q You had an agreement as to what your sentence
12 would look like if you were sentenced under the
13 sentencing guidelines, and what the government's giving
14 you in this plea agreement is saying instead of being
15 sentenced at that range, we'll cap your sentence at
16 five years?

17 A Yeah, I knew it was less.

18 Q And you knew, did you not, that it was a lot less?
19 In fact, the range under the sentencing guidelines
20 would have been 11 and a quarter to 14 years?

21 A I don't remember the 11 years being said out loud,
22 so I don't know how to relate to that except that it
23 was more than the five years.

24 Q Substantially more?

25 A Substantially more.

1 Q Do you recall it more than double the five years?

2 A I do not remember that being quantified.

3 THE COURT: Just so I understand it -- excuse
4 me. This is a recommendation by the government; is
5 this what this is? This isn't something that's an
6 agreed-upon sentence.

7 MR. POLLACK: It's not an agreed-upon
8 sentence. The government and the defendant agreed to
9 jointly recommend to the Court how the sentencing
10 guidelines would apply.

11 THE COURT: Right. And that's not binding on
12 the Court.

13 MR. POLLACK: That is not binding on the
14 Court. What is binding on the Court is the fact that
15 the government agreed to, regardless of where the
16 sentencing guidelines come out, cap the maximum
17 sentence at five years by offering a five-year statute.

18 THE COURT: The statute that he's charged
19 under?

20 MR. POLLACK: Yes.

21 THE COURT: Yes.

22 BY MR. POLLACK:

23 Q So that was your understanding. But for this
24 agreement, you would have gotten substantially more?

25 In this agreement, the government is giving you --

1 you're only pleading guilty to a single offense, right?

2 A Yes.

3 Q And that single offense has a five-year maximum
4 sentence?

5 A Yes.

6 Q So regardless of where the sentencing guidelines
7 come out, you cannot get more than five years?

8 A That's my understanding.

9 Q And that would not be true if the government had
10 not offered you this deal?

11 A That's right.

12 Q And when we talk about these years, you understand
13 under the federal sentencing system, there's no such
14 thing as parole, right?

15 A I was told that, yes.

16 Q And you, as part of your agreement with the
17 government, you agreed to cooperate with the
18 government, correct?

19 A I agreed to make myself available and tell the
20 truth in all situations.

21 Q But specifically you agreed to cooperate, make
22 yourself available, and that would include give your
23 testimony today, right?

24 A Yes, sir.

25 Q Because you would otherwise have a constitutional

1 right not to testify, right?

2 A I believe so.

3 Q And you gave that up as part of this agreement
4 that you would tell the government yes, I will be
5 willing to testify, right?

6 A Yes.

7 Q And you said that you have to testify truthfully,
8 right?

9 A Yes.

10 Q And the whether or not you're telling the truth
11 for purposes of whether or not you complied with this
12 agreement is determined by the government, correct?

13 A No, I don't think so.

14 Q So you think if I think your testimony hasn't been
15 truthful, I can take this agreement away from you?

16 A I believe that if the Court believes I'm telling
17 the truth.

18 Q But if the government thinks you're not telling
19 the truth, it never gets to the Court, does it?

20 A I don't understand your question.

21 Q My question is: As long as the government
22 believes what you are saying, you are in no danger of
23 violating this agreement, correct?

24 A It's the government who would be the one to
25 challenge whether what I'm telling you the truth is the

1 truth, then you would be correct.

2 Q And that is in fact your understanding of how it
3 works?

4 A I don't understand the power of the Court to
5 impose some penalty for failure to tell the truth.

6 Q In addition to your obligation to cooperate and
7 give what the government believes to be truthful
8 testimony, you also understand, do you not, that you
9 can be sentenced -- or you can't be sentenced for more
10 than five years under this agreement, but you can be
11 sentenced for less than 5 years, correct?

12 A Yes.

13 Q And the government asked you yesterday about this
14 cooperation provision, but one thing they didn't ask
15 you about is something that's called substantial
16 assistance in the investigation and prosecution of
17 others. Are you familiar with that term or that
18 phrase?

19 A Yes.

20 Q What that phrase means is that regardless of where
21 the sentencing guidelines come out, you can get a
22 substantially lower sentence, even lower than the five
23 years, if the government tells the Court that you have
24 been in substantial -- that you have provided
25 substantial assistance in the prosecution of other

1 people, people other than yourself, correct?

2 A Yes.

3 Q Like Mr. Okun here?

4 A Yes.

5 Q And I take it, Mr. Field, you would like to get

6 the least sentence possible?

7 A Yes, sir.

8 MR. POLLACK: I have nothing further. Thank
9 you.

10

11 REDIRECT EXAMINATION

12 BY MR. CANNON:

13 Q Good morning, Mr. Field.

14 A Good morning.

15 Q Briefly touching on what Mr. Pollack covered last
16 in the cross-examination, Mr. Field, have any promises
17 been made to you in regard to your testimony or any
18 reductions in your sentence?

19 A No.

20 MR. CANNON: I'd like to pull up Government's
21 Exhibit 217, which has been admitted?

22 THE CLERK: It has been?

23 MR. CANNON: Yes, Mr. Neal.

24 Q You looked at this document on cross-examination
25 this morning, and the questions were about that you

1 wanted this particular loan documented. Mr. Field, why
2 was it important to you to document these loans?

3 A It's good business practice, but also in the
4 conversation with Mr. Okun in December when he was
5 indicating the results of the legal review, one of the
6 issues was a more and complete and accurate
7 documentation of the loans.

8 Q Was there an incomplete and inaccurate
9 documentation in the past?

10 MR. POLLACK: Objection, lack of foundation.

11 THE COURT: Overruled.

12 MR. CANNON:

13 A It's my understanding that that is true.

14 MR. CANNON: I'd like to move to Government's
15 Exhibit 139, which is in evidence, and the second page.
16 And that second, I believe, legal solution paragraph.

17 THE COURT: Legal situation?

18 MR. CANNON: Legal situation.

19 Q Mr. Field, the information that you're relaying in
20 your memo here, who was providing you that information?

21 A Mr. Okun and Mrs. Coleman.

22 Q Did you have any personal knowledge about
23 Mr. Pajonas and his task to change the exchange
24 agreements?

25 A No, I did not.

1 Q And prior to the November 7 memo from Mr. Perkins,
2 had you ever heard Mr. Okun or Ms. Coleman identify
3 this issue with Todd Pajonas and the exchange
4 agreements?

5 A I don't believe so, no.

6 Q And going up to the first bullet point in the
7 accounting records, if you could look at the sentence
8 that says, "While Todd might assert."

9 A Yes.

10 Q "Due to the actions of IPofA and the borrowing of
11 cash," what were you referring to in that sentence?

12 A In my discussion with Mr. Pajonas, he indicated
13 that the accounting function was taken over or was the
14 responsibility of someone in Richmond, not his
15 organization.

16 Q And are you referring to the borrowings or taking
17 of money out of the 1031 Tax Group in that sentence?

18 A That's part of it.

19 Q Moving along, I think we're done with that
20 exhibit. Thank you.

21 Following the conversation with the November 9
22 phone call with McGuire Woods, you have talked about
23 your conversation with Mr. Okun.

24 A Yes, the next day.

25 Q The next day. And did you explain to Mr. Okun or

1 did you talk to Mr. Okun about the company's practices
2 being in violation of the exchange agreements?

3 A Yes.

4 Q What did you explain to him on that subject?

5 A That in the conversation with McGuire Woods, that
6 they pointed out that what the company was actually
7 doing was not consistent with or in accord with the
8 documents that we had forwarded to them for their
9 review.

10 Q Did Mr. Okun disagree with that assessment?

11 A No.

12 Q In subsequent conversations with Mr. Okun about
13 exchange agreements, did he ever disagree with the idea
14 that the borrowing practice in the past was not
15 consistent with the exchange agreements?

16 A No.

17 Q And then one final point.

18 MR. CANNON: If we could pull up Government's
19 Exhibit 265, the second page.

20 Q This is from April 26 or 25, 2007?

21 A Yes.

22 Q According to your knowledge at the time, what was
23 the approximate, just a range, of loan values that was
24 owed to the qualified intermediary companies?

25 A Somewhere in the 120 million, 125 million-dollar

1 range.

2 Q Had discussions about this loan with Mr. Okun,
3 were those the first discussions you had had with
4 Mr. Okun about retaining borrowing? Obtaining a loan
5 to repay?

6 A Oh, no, huh-uh.

7 Q How far back did those discussions go?

8 A Certainly back to his assertion or his
9 conversation in mid December where he said it
10 was planned -- he planned -- was going to repay in
11 total all loans.

12 Q Mr. Field, in conjunction with that amount of
13 borrowings, did you have any conversation with Mr. Okun
14 about the range of outstanding loans from the 1031 Tax
15 Group?

16 A Yes.

17 Q When did you have these discussions?

18 A The total amount of outstanding? Several times.
19 Many times.

20 Q Was there ever any dispute that there were loans
21 outstanding to the 1031 Tax Group?

22 THE COURT: From Mr. Okun?

23 Q From Mr. Okun.

24 A From Mr. Okun, no.

25 Q Was there ever any -- what was the range of

1 outstanding loans to the 1031 Tax Group that you told
2 Mr. Okun?

3 MR. POLLACK: Objection. Asked and answered.

4 THE COURT: I thought he just answered it.

5 MR. CANNON: The range of loans. What did he
6 communicate to Mr. Okun as being the range of loans?
7 The amount of loans, I'm sorry.

8 THE COURT: The amount or the range?

9 MR. CANNON: The amount of loans. And if
10 that was a range -- let's start over.

11 THE COURT: Sustained.

12 BY MR. CANNON:

13 Q You had conversations with Mr. Okun in which you
14 communicated to him amounts of loans that were
15 outstanding?

16 A Yes.

17 Q And what number or numbers did you tell Mr. Okun
18 was the amount of the loans outstanding to 1031 Tax
19 Group?

20 MR. POLLACK: Objection. Is there a time
21 frame?

22 THE COURT: When?

23 BY MR. CANNON:

24 Q Did you have a discussion with Mr. Okun in late
25 2006 about the loans?

1 A Yes.

2 Q At that time what number did you tell Mr. Okun?

3 A The number that was provided to me by Mr. Zacarias
4 was \$130 million.

5 THE COURT: But the question is: What did
6 you tell Mr. Okun?

7 A I'm sorry. And I communicated that number in
8 discussions with Mr. Okun.

9 Q What was Mr. Okun's response?

10 A He did not believe that that number was at all
11 accurate and indicated he believed that all of those
12 borrowings had been repaid and the number, if it was
13 any number at all, was a very small number.

14 Q Did you have subsequent conversations with
15 Mr. Okun about the amount of the loans?

16 A Yes.

17 Q Did he continue in his assertion that all or
18 virtually all of the loans were repaid?

19 A No.

20 Q And in April, Mr. Field, did you have discussions
21 with Mr. Okun about the amount of the outstanding
22 loans?

23 A Yes.

24 Q Was Mr. Okun continuing in his assertion -- what
25 was Mr. Okun's response to the amount of the loans?

1 A He had no particular reaction or resistance to the
2 numbers I was using.

3 Q Earlier you testified, Mr. Field, that your belief
4 that the approximate range of loans or there were
5 approximately \$120 million of loans there at the end of
6 April?

7 THE COURT: Wait a minute. Why don't you let
8 him testify. What number were you using in the
9 conversation?

10 THE WITNESS: 120.

11 Q Is that the number you were relaying to Mr. Okun
12 in this conversation?

13 A Yes.

14 MR. CANNON: No further questions, Your
15 Honor.

16 THE COURT: Can he be excused permanently or
17 does he need to remain available to be recalled?

18 MR. CANNON: From the government's
19 perspective, he can be excused.

20 MR. POLLACK: He can be excused.

21 THE COURT: You can excused and relieved from
22 your subpoena. Thank you for being with us and giving
23 us your evidence.

24 (The witness was excused from the witness
25 stand.)

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I, Diane J. Daffron, certify that the foregoing is a true and accurate transcription of my stenographic notes.

/S/ Diane J. Daffron	3-21-09
<u>DIANE J. DAFFRON, RPR, CCR</u>	<u>DATE</u>